

FIGHT OVER THE LABOR LAW

ONLY ONE FORFEITURE CLAUSE KNOCKED OUT SO FAR.

So far as the decision goes, public contracts may still be forfeited for failure to pay the prevailing rate. City Appeals—Other Pending Attacks on Law

The city has appealed from the decision of the Appellate Division which declares that it is unconstitutional that clause of the Labor law that provides for the forfeiture of money earned by a contractor for public work under his contract if it is discovered that he has not paid the prevailing rate of wages. The appeal will be heard on Jan. 7. There is another forfeiture clause in the Labor law—the forfeiture of the contract itself by failure to pay the prevailing rate of wages. This was not before the court and has not been declared unconstitutional.

The full effect of the decision of the Appellate Division was discussed yesterday by contractors and representatives of organized labor, and it was generally agreed that the contractors had won a great victory.

Ever since the Prevailing Rate of Wages law was enacted contractors on city work have been annoyed and in many cases put to great inconvenience by the holding up of money due on their contracts by the Comptroller in consequence of complaints made by workmen, walking delegates and labor unions that the law was being violated in the payment of employees.

The effect of the decision of the Appellate Division is that any contractor or sub-contractor on municipal work may, so far as concerns payment by the city to him for work done, go into the market and hire labor for whatever he can get in view of the effect of the "prevailing rate," and that he may be less than the "prevailing rate" the city authorities will not be permitted to withhold payments on his contract from him for that reason.

The decision promises to be of importance to the contractors for the Subway Rapid Transit Railroad. The contract prices for this were calculated on the basis of the prevailing rate of wages, and the contractors can see no reason why they are to be asked to bear just so much more profit.

The decision, so far as it is concerned by the city at least, will not be prevailingly important. The result may be that departmental employees working side by side with contractors' employees, will receive considerably higher wages or the same wage.

Latin Kelley of Kelley & Rose, who secured the decision for William H. Francis, the attorney for the contractors, sees the principle involved in the case as being that the law is unconstitutional and void wherein it permits the city to refuse to pay to contractors who are guilty of not paying the prevailing rate of wages, money to which they would otherwise be entitled. In this case Mr. Rodgers performed enough work on a second floor of a building to entitle him to payment thereunder. In July, 1900, there became due to him about \$3,000 for work actually performed. The labor unions charged Mr. Kelley with violating the Labor law in not paying the prevailing rate. He admitted the violation, and set up that the act was unconstitutional and void. He asked for a writ of mandamus to compel the city to pay him what was due.

The act provides that no laborer, workman or mechanician in the employ of a contractor or employer or person doing or contracting to do the whole or a part of the work contemplated by the contract entered into shall be entitled to receive payment for work done in any one calendar day, "unless the wages to be paid for a legal day's work shall not be less than the sum of one dollar." The amount paid for public work hereafter shall contain a provision that the same shall be void and of no effect unless the person or persons performing the same shall comply with the provisions of this act, and no such person or corporation shall be entitled to receive any sum, nor shall any corporation or entity of state or of a municipal corporation pay the same or authorize its payment from the funds under its charge, unless it may say specifically in its contract for work done upon any contract which in its form or manner of performance violates the provisions of this section."

This is the main point of the law. Any officer, agent or employee of this State or a municipal corporation theron having a duty to act in the premises who violates, overrules, hinders, arrests, prevents, or evades or rescinds any of the provisions of this act shall be guilty of malfeasance in office and shall be subject to removal from office by his superior power to appoint or remove such officer, agent or employee, otherwise by the Governor.

Under the provisions of this act the Comptroller, fearing undoubtedly the effect of the clause and that he might be held guilty of malfeasance, declined to pay Mr. Rodgers' bill. Mr. Kelley, however, succeeded in preventing the payment by the Comptroller of money earned under a contract where the Labor law had been violated, and he is now proceeding to collect what is due him. The city is obliged to pay contractors who have performed work and earned money, even though they have not paid to anyone or removed such officer, agent or employee, otherwise by the Governor.

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What practical effect will this have on other contracts?

"It seems to me that the real effect of the decision is that the city might not be liable to employees of contractors with the city," replied Mr. Kelley. "The court has decided the whole question concerning the constitutionality and need for the act in the opinion of the case. There can be no doubt, I think, that when the other provisions attacked are brought before the courts, the courts will decide that they are unconstitutional and void. The whole trend of authorities in this State, other States and in the United States courts is against the constitutionality of the law."

The contractors' association has decided to fight the entire labor law and the labor organizations are determined to do the same. A large number of actions are pending now.

MRS. CHARTRES AND MR. SAMUEL

Spent Some Time Together Last Year in New Orleans—Guests at the Same Hotel.

NEW ORLEANS, Dec. 15.—Sydney Samuel, the rich New Yorker who committed suicide recently in Portland, and Anita Viviana Chartres, the authoress, playwright and musical critic, because of whom he committed suicide, spent some time in this city at the St. Charles Hotel last winter and are well remembered. Samuel arrived first and took an inexpensive room on one of the upper floors of the hotel.

The next day there appeared on the register this information:

Mrs. Viviana Chartres, child and maid, New York.

The next arrivals were assigned to two suites of rooms on the fifth floor, among the most expensive in the building, and it was the Governor's apartments. Mrs. Chartres lived in all the elegance the hotel could afford. Her maid came for her from New York, and she quite a quiet child of 6 or 7 years. During the whole of their stay here Mrs. Chartres and Samuel were seldom apart. She went to the opera and the theater the same together. Every night when about 10 o'clock a carriage was at the door and Mrs. Chartres with young Samuel and her maid were away.

The next morning the maid was surprised. Mrs. Chartres was never seen by the New Orleans reporters. The relationship was far from being a secret, and the meeting here was that of friendship and the meeting here was supposed to have been an accident. From time to time Mrs. Chartres and Samuel were seldom apart. She went to the opera and the theater together. Every night when about 10 o'clock a carriage was at the door and Mrs. Chartres with young Samuel and her maid were away.

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